IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL WRIT PETITION NO.3561/2005
(M/s Khandelia Oil & General Mills (P) Ltd.
Vs. State of Raj. & Ors.)

Date of Judgment : 03.08.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sanjeev Johri, for the petitioner.
Mr. Anil Bhansali on behalf of
Mr. N.M. Lodha, AAG for respondents.

By way of filing the present writ petition, the petitioner Company is challenging the show cause notice dated 31.5.2005 for assessment year 2001-02 (Annexure-8) as well as the show cause notice dated 07.06.2005 for assessment year 2000-01 (Annexure-9) issued by the Commercial Taxes Officer, Special Circle, Sriganganagar under Section 30 of the Rajasthan Sales Tax Act, 1954 on the premise that the petitioner Company has availed the benefit of exemption from tax to the extent of 75% whereas the petitioner Company was eligible for exemption from tax to the extent of 60% only.

According to the learned counsel for the petitioner, the petitioner Company was granted Exemption Certificate by the competent authority which he has placed on record as Annexure-2 in which it is clearly mentioned that the petitioner Company shall be eligible for exemption from tax liability to the extent of 75% on total Fixed Capital Investment. Therefore, once the certificate has been issued by the competent authority granting exemption, the taxing authority has no jurisdiction to take different view then the relief granted under the Exemption Certificate.

Learned counsel for the petitioner while inviting the attention of this Court towards the judgment rendered by this Court in case of M/s. Arihant Solves Pvt. Ltd. Vs. State of Rajasthan & Anr. Reported in [2005] 20 Sales Tax Today 120 (HC, Raj.) prayed that in similar circumstances, this Court held that the certificate which is issued by the District Level Screening Committee cannot be questioned by the Commercial Taxes Officer and the taxing authority without getting correction in the certificate by following appropriate procedure by approaching the Committee itself and could not have issued notice to the petitioner on assumption that the petitioner was entitled to 60% exemption instead of 75% exemption.

According to the learned counsel for the

petitioner while holding the above preposition, the learned Single Judge of this Court allowed the petition.

I have perused the aforesaid judgment and heard learned counsel for the petitioner.

It is not disputed before this Court in this petition that District Level Screening Committee – respondent No.2 issued an Exemption Certificate for availing the benefit of Central Sales Tax Incentive Scheme, 1989. The petitioner Company was recommended for issuance of eligibility certificate by the authority concerned of respondent No.2 after its meeting. The recommendation was made on 6.5.1995 (Annexure-2) in which it is clear that eligibility/exemption to the extent of 75% tax liability on total Fixed Capital Investment Rs.2,23,35,734/- was allowed and in pursuance thereof regular assessment was done by the respondent No.5 for the assessment year 2000-01 under CST and the benefits of incentive were shown to the extent of 75% as per the Exemption Certificate. Likewise, for assessment year 2001-02, the same benefit was extended.

On 30.10.2004, the respondent No.4 – C.T.O., Anti-Evasion, Sriganganagar issued show cause notice to the petitioner company under Section 30 of the Rajasthan Sales Tax Act, 1994 for reopening of the

regular assessment. The petitioner Company immediately submitted a detailed reply explaining the entire position chronologically and submitted that District Level Screening Committee rightly conferred the benefits to the extent of 75% as the conditions, restriction and other aspect of Annexure-C of the Scheme of 1989, were duly fulfilled by the petitioner Company. On 1.12.2004, respondent No.2 – District Level Screening Committee issued a notice again to the petitioner Company in clear and unambiguous terms specifying therein that as per the Exemption Certificate dated 6.5.1995, the industrial unit (of petitioner company) under Scheme 1989 rightly availed the exemption benefits to an extent of 75% in view of Annexure-C, Para-3 as it made the 'diversification' by more than 100% production capacity and investment. The petitioner company filed additional reply on 2.12.2004 along with the said certificate dated 1.12.2004 of District Level Screening Committee before the respondent No.4 explaining the position once again. It is also mentioned in the petition that next regular assessment order was also passed by respondent No.4 for assessment year 2001-02, which is fixed till the completion of period of seven years of the incentive Scheme of 1989 as on 26.4.2002. However, later on, the impugned notice dated 31.5.2005 (Annexure-8) as well as notice dated 7.6.2005 (Annexure-9) were issued by the respondent No.5 for reopening of the assessment for the year 2000-01 and

2001-02 in which it was specified that already availed incentive to the extent of 75% on total Fixed Capital Investment was not permissible as the same could have been to the extent of 60% only.

In the reply filed by the respondents No.1, 3 and 4, the prayer of the petitioner is opposed and it is submitted that as per the provisions of Section 30 of the Rajasthan Sales Tax Act, 1994, if an assessment in which for any reason the levy of tax or sum payable under the Act has been escaped wholly or in part of wherein tax has been wholly or in part un-assessed or under-assessed in any way or under any circumstances, is deemed to be an escaped assessment and the assessing authority has jurisdiction to re-open the assessment on the basis of material on record and complete such assessment within the time limit after making such enquiry as it may consider necessary. Therefore, the notices issued by the respondent – assessing authority are well within his jurisdiction and the same simply do not suffer from any infirmity or illegality. It is further stated in the reply that the petitioner instead of joining the issues before the assessing authority in pursuance of re-assessment notices issued, has directly approached this Court. Therefore, obviously, the assessing authority has granted full opportunity of hearing to the petitioner before passing the order for re-assessment. Therefore, it is absolutely not permissible that the

petitioner should be permitted to invoke extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The answering respondents maintain that the writ petition preferred by the petitioner against the show cause notice is absolutely pre-mature and the same deserves to be dismissed. On merit also, it is stated in the reply that the assessing authority has rightly issued notices under Section 30 of the Act for re-assessment with regard to escaped assessment.

After hearing both the parties and perusing the judgment in case of M/s. Arihant Solves Pvt. Ltd. Vs. State of Rajasthan & Anr. (supra), in my opinion, the controversy involved in this case with regard to issuance of notice under Section 30 of the Rajasthan Sales Tax Act by respondent No.5 was without jurisdiction. In the aforesaid judgment, it has been held that the certificate issued by the District Level Screening Committee cannot be questioned by Commercial Taxes Officer and the taxing authority without getting correction in the certificate by following appropriate procedure by approaching the Committee itself and could not have issued notice to the petitioner on assumption that the petitioner was entitled to 60% exemption instead of 75% exemption. In this view of the matter, it is clear from Annexure-2 that the District Level Screening Committee has very specifically mentioned in the Exemption Certificate

that the petitioner was entitled to exemption from the tax liability upto the extent of 75%, therefore, the notices issued by the respondent No.5 are just against the Exemption Certificate. Accordingly, while following the aforesaid judgment, this writ petition is allowed and the notice dated 31.5.2005 (Annexure-8) as well as notice dated 7.6.2005 (Annexure-9) issued by Commercial Taxes Officer, Special Circle, Sriganganagar are set aside. There shall, however, be no order as to costs.

(GOPAL KRISHAN VYAS), J.

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